

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

PARAGON SYSTEMS, INC.

Employer

and

Case 05-RC-205598

**FRATERNITY OF AMERICAN PROTECTIVE
OFFICERS (FAPO)**

Petitioner

and

**NATIONAL LEAGUE OF JUSTICE
AND SECURITY PROFESSIONALS (NLJSP)**

Intervenor

**DECISION ON CHALLENGED BALLOTS AND
ORDER DIRECTING CHALLENGED BALLOTS BE OPENED**

Pursuant to a Stipulated Election Agreement,¹ an election was conducted by mail ballot on September 28, 2017, and a count was held on January 24, 2018, to determine whether a unit of employees of Paragon Systems, Inc. (the Employer) wishes to be represented for purposes of collective bargaining by the Petitioner, Fraternity of American Protective Officers (FAPO) or by the Incumbent Union (the Intervenor), the National League of Justice and Security Professionals (NLJSP). The bargaining unit consists of:

Included: All full-time and regular part-time uniformed officers and sergeants employed by the Employer at the Department of Education, currently located at 400 Maryland Avenue, SW, Washington D.C. and 550 12th Street, NW, Washington, D.C.

Excluded: All Lieutenants, Captains, Majors, professional employees, office clerical employees, managers, and supervisors as defined in the Act.

The tally of ballots prepared at the conclusion of the election shows that of the approximately 72 eligible voters, 1 vote was cast for the Petitioner, 1 vote was cast for the Incumbent Union, and 0 votes were cast against the participating labor organizations. There was 1 void ballot, and 21 challenged ballots, a number that is sufficient to affect the results of the election.²

¹ The Stipulated Election Agreement was approved by the Regional Director on September 13, 2017.

² No party filed objections to the conduct of the election or to conduct affecting the results of the election.

THE CHALLENGED BALLOTS

The following voters were challenged for the reasons listed:

NAME	CHALLENGED BY	REASON
Ernest Ajang	Intervenor	No longer employed by the Employer
Sylvain Amezian	Intervenor	No longer employed by the Employer
David Angelus	Intervenor	No longer employed by the Employer
Renee Berry	Intervenor	No longer employed by the Employer
Kahil Britt	Intervenor	No longer employed by the Employer
Erick Carter	Intervenor	No longer employed by the Employer
Allen-Michael Clere	Intervenor	No longer employed by the Employer
Ishara Cormack	Intervenor	No longer employed by the Employer
Ancel Ekpenyong	Intervenor	No longer employed by the Employer
Eric Fowler	Intervenor	No longer employed by the Employer
Emeka Iwuji	Intervenor	No longer employed by the Employer
Isaac Kakuchie	Intervenor	No longer employed by the Employer
Willie Melson	Intervenor	No longer employed by the Employer
Emmanuel Mensah	Intervenor	No longer employed by the Employer
Ronel Michel	Intervenor	No longer employed by the Employer
James Newman	Intervenor	No longer employed by the Employer

NAME	CHALLENGED BY	REASON
Toyosi Omatayo	Intervenor	No longer employed by the Employer
Deleno Shedrick	Intervenor	No longer employed by the Employer
Donald Sherbert	Intervenor	No longer employed by the Employer
Victor Spain	Intervenor	No longer employed by the Employer
Emmanuel Stanton	Intervenor	No longer employed by the Employer

The Intervenor maintains that the challenged ballots should not be opened and counted, as those eligible voters employed by the Employer at 400 Maryland Avenue SW, Washington, D.C. were no longer employed by the Employer after December 1, 2017. Instead, the Intervenor claims that all of the challenged eligible voters are now employed by a different employer. The Intervenor calls for either a run-off election for all eligible employees currently employed by the Employer, or that a Revised Tally of Ballots issue noting the tie vote and that a majority of eligible voters had not been cast for the Petitioner.

The Petitioner maintains that the challenged ballots should be opened and counted on the basis that, when the election was conducted in September 2017, all of the eligible voters who had been challenged were employed by the Employer at the two locations specified in the Stipulated Election Agreement. As of December 2017, at the time the count was conducted, the Employer's contract with the Department of Education changed and the challenged eligible voters were no longer employed by the Employer. The Petitioner contends at the time the employees cast their vote, each was employed by the Employer, and that the count was conducted in December only because the Intervenor filed a charge that blocked further processing of the Petition.

I have considered the evidence and the arguments presented by the parties and, as discussed below, I overrule the Intervenor's challenges, finding that those employees who were challenged were eligible to vote at the time each cast their votes. Accordingly, all of the challenged ballots should be opened and a Revised Tally of Ballots should issue.

PROCEDURAL HISTORY

The Petition was filed on September 5, 2017. Pursuant to the Stipulated Election Agreement, those eligible to vote in the election are employees in the bargaining unit described above who were employed during the payroll period ending September 7, 2017. Also, pursuant to that Agreement, the secret ballot election was conducted by mail beginning on September 28, 2017. All ballots were due back in the Regional Office by October 19, 2017 by 3:00 p.m.

On September 12, 2017, Case 05-CA-206059 was filed by the Intervenor against the Employer, alleging the Employer violated Section 8(a)(5) of the Act by refusing to bargain. Pursuant to Section 11730.3(b) of the Case Handling Manual, Part II – Representational Proceedings, the Regional Director determined Case 05-CA-206059 blocked any further processing of the Petition. As such, the Petition was held in abeyance while the charge was investigated and all ballots were collected and impounded in the Regional Office.

On October 31, 2017, I dismissed Case 05-CA-206059. On November 14, 2017, the Intervenor filed an appeal. There is no dispute that as of December 2017, the Employer no longer employed employees at the 400 Maryland Avenue, SW, Washington D.C. worksite. The appeal was denied on January 16, 2018. By the parties' agreement, the ballots were counted on January 24, 2018.

ANALYSIS AND CONCLUSION

In mail ballot elections, individuals are deemed to be eligible voters if they are in the unit on both the payroll eligibility cutoff date and on the date they mail in their ballots to the Board's designated office. *Dredge Operators, Inc.*, 306 NLRB 924, 924 (and cases cited in fn. 6) (1992). Thus, to be eligible, a voter must be employed in the unit on both the payroll eligibility date and on the date of the election. Here, it is undisputed that the challenged voters were employed on the date of eligibility and date of election, September 7 and 28, 2017, respectively.

It would appear what the Intervenor is arguing is that those employees whose ballots were challenged were not employed on the date the tally of ballots. This, however, is not the standard, as expressed by the Board above. In a mail ballot election, the question is whether an employee (who was employed in the unit during the payroll eligibility date) remained in the unit at the time he or she mailed their ballot back to the Regional Office. If so, the employee is eligible to vote. Here, all ballots were due back to the Regional Office on October 19, 2017. Thus, all ballots, even those of the challenged voters, were received in the Regional Office over a month before the Employer lost its contract with the Department of Education for the worksite at 400 Maryland Avenue, SW, Washington, D.C.

In sum, I determine that the above-named employees are eligible to vote, and that the challenge to each of their ballots is overturned.

ORDER

I have overruled all of the Incumbent Union's (Intervenor) challenges. Therefore, **IT IS ORDERED** that all of the above-challenged ballots be opened and counted, and that a Revised Tally of Ballots should issue.

February 12, 2018

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **February 26, 2018**.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the **Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001**. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: February 12, 2018

(SEAL)

/s/ *Sean R. Marshall*

Sean R. Marshall, Acting Regional Director
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